



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

**[Docket No. 150112035-5035-01]**

**RIN 0648-BE80**

**Fisheries off West Coast States; Highly Migratory Species Fishery Management Plan; Revision to Prohibited Species Regulations**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS is proposing regulations under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to revise the prohibited species regulations so that each of the exceptions to the policy in the Fishery Management Plan are explicitly identified in the regulations. The specific exceptions will allow HMS fishermen to retain: (1) Salmon and Pacific halibut, if all of the necessary regulations for those respective fisheries are followed; and (2) basking, megamouth, and great white sharks, if they are sold or donated to a scientific or educational organization. This action is necessary to more accurately reflect the intent of the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP).

**DATES:** Comments must be received on or before *[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2015-0006, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2015-0006>, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Taylor Debevec, NMFS West Coast Region Long Beach Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier “NOAA-NMFS-2015-0006” in the comments.

*Instructions:* Comments must be submitted by one of the above methods to ensure they are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of the draft Regulatory Impact Review (RIR) and other supporting documents are available via the Federal eRulemaking Portal: <http://www.regulations.gov>, docket NOAA-NMFS-2015-0006 or contact the Regional Administrator, William W. Stelle, Jr., NMFS West Coast Region, 7600 Sand Point Way, NE, Bldg 1, Seattle, WA 98115-0070, or [RegionalAdministrator.WCRHMS@noaa.gov](mailto:RegionalAdministrator.WCRHMS@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Taylor Debevec, NMFS, 562-980-4066.

**SUPPLEMENTARY INFORMATION:**

**Background**

The HMS FMP was implemented in a final rule published on April 7, 2004 (69 FR 18444). NMFS was recently informed of a discrepancy between the implementing regulations and the intent of the HMS FMP regarding the policy on prohibited species. The HMS FMP identifies several fish as “prohibited species” (salmon, Pacific halibut, basking shark, megamouth shark, and great white shark) that cannot be retained in HMS fisheries, with the following exceptions: (1) Any can be kept for examination by an authorized observer or to return tagged fish as specified by the tagging agency; (2) salmon and Pacific halibut can be kept provided all applicable state and Federal regulations are followed (e.g., gear, permits, season, fishing area); and (3) basking, megamouth, and great white sharks can be kept provided they are sold or donated to recognized scientific and educational organizations for research or display purposes. The implementing regulations, however, only identify the first exception above; the second and third are not included in the regulations. The prohibited species policy of the FMP was designed with the second and third exceptions to: prevent salmon and Pacific halibut from being retained as incidental catch in HMS fisheries, and not preclude fishermen from legally participating in salmon and Pacific halibut fisheries (permits, closures, gears, etc.); and discourage targeting of the rare and low productivity sharks, and not waste them if caught.

The current regulations refer to prohibited species in three sections of the Code of Federal Regulations (in title 50 part 660 subpart K), which, collectively, do not convey the full prohibited species policy of the HMS FMP. The definition of “prohibited species” (§ 660.702) does not specify a list of prohibited species and is vague about the exceptions. The regulations on prohibitions (§ 660.705(e)) describe the action that should be taken if a prohibited species is caught (i.e., return the fish to sea), but does not incorporate the exceptions. Finally, the regulations on general catch restrictions (§ 660.711(a)) identify the species that are prohibited in HMS fisheries. The lack of clarity and cohesion with the HMS FMP has prompted NMFS to modify the three sections of the regulations that govern prohibited species.

### **Proposed Regulations**

The proposed rule would codify at § 660.705(e) the second and third exceptions in the prohibited species policy of the HMS FMP, as described above. The definition of “Prohibited species” at § 660.702 would be revised to remove the general description of what a prohibited species means, and instead simply set forth the species names; the prohibited species themselves would not change. As a result, the regulations at § 660.711(a), which currently include the species names, would be redundant and, therefore, would be deleted. By correcting the language at § 660.705(e) to explicitly identify all the exceptions and revising the definition of prohibited species, the regulations would be consistent with the HMS FMP.

### **Classification**

The NMFS West Coast Regional Administrator has preliminarily determined that this proposed rule is consistent with the MSA and other applicable laws.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This proposed rule has been determined to be categorically excluded from the requirement to prepare an Environmental Assessment under the National Environmental Policy Act because the rule falls within the scope of alternatives addressed in the environmental impact statement (EIS) prepared for the HMS FMP in 2003. The EIS determined that the prohibited species policy would ensure that neither the sharks nor the strict management of Pacific halibut and salmon are compromised by HMS fisheries.

Pursuant to the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The rationale for the certification is as follows:

This proposed rule, in accordance with the HMS FMP and the recommendation of the Pacific Fishery Management Council, will revise the prohibited species regulations so that the exceptions to the policy as outlined in the FMP are explicitly identified in the regulations. The specific exceptions will allow HMS fishermen to retain: (1) salmon and Pacific halibut if all of the necessary regulations for those respective fisheries are followed, and (2) basking, megamouth, and great white sharks if they are sold or donated to a scientific or educational organization.

The main entities to which this action would apply are fishermen that fish for albacore using surface hook-and-line gear, as they often have the opportunity to fish for salmon with the same gear and on the same trip. Typically, albacore are available off of

the coast of Oregon and Washington around May or June, while the salmon season is also open. Though albacore is caught beyond 10 miles off the coast, fishermen sometimes stop to catch salmon when returning to port and generally inside of 5 miles from the coast.

On June 12, 2014, the Small Business Administration (SBA) issued an interim final rule revising the small business size standards for several industries effective July 14, 2014 (79 FR 33467). The rule increased the size standard for Finfish Fishing from \$19.0 million to \$20.5 million, Shellfish Fishing from \$5.0 million to \$5.5 million, and Other Marine Fishing from \$7.0 million to \$7.5 million. NMFS conducted its analysis for this action in light of the new size standards. On average, there are 28 commercial vessels, and 4 charter/recreational vessels per year that would be impacted by this rule. NMFS considers all entities subject to this action to be small entities as defined by the revised size standards.

The clarification of these regulations will enable all fleets to operate their businesses as intended by the HMS FMP. This rule is expected to have a positive effect on income because HMS fishermen will be allowed to retain and sell salmon and halibut (provided the vessel is fishing under a salmon or halibut permit). This positive impact is expected to be modest, however, because not many fishermen actively participate across these fisheries, especially on the same trip. If this proposed rule were not finalized, fishermen would be more restricted than the HMS FMP intended; they would not be allowed to be in possession of, or land, species listed as prohibited while also possessing or landing HMS.

Because each affected vessel is a small business, this proposed action is

considered to equally affect all of these small entities in the same manner. Based on the disproportionality and profitability analysis above, the proposed action, if adopted, will not have adverse or disproportional economic impact on these small business entities.

Because this rule would not have a significant economic impact on a substantial number of small entities, an Initial Regulatory Flexibility Analysis is not required, and one was not prepared for this proposed rule.

#### **List of Subjects in 50 CFR Part 660**

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: May 29, 2015.

Samuel D. Rauch III,  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

#### **PART 660—FISHERIES OFF WEST COAST STATES**

1. The authority citation for part 660 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

2. In § 660.702, revise the definition for “Prohibited species” to read as follows:

#### **§ 660.702 Definitions.**

\* \* \* \* \*

*Prohibited species* means any highly migratory species for which quotas or catch limits under the FMP have been achieved and the fishery closed; salmon; great white shark; basking shark; megamouth shark; and Pacific halibut.

\* \* \* \* \*

3. In § 660.705, revise paragraph (e) to read as follows:

**§ 660.705 Prohibitions.**

\* \* \* \* \*

(e) When fishing for HMS, fail to return a prohibited species to the sea immediately with a minimum of injury, except under the following circumstances:

(1) Any prohibited species may be retained for examination by an authorized observer or to return tagged fish as specified by the tagging agency.

(2) Salmon may be retained if harvested in accordance with subpart H of this part, and other applicable law.

(3) Great white sharks, basking sharks, and megamouth sharks may be retained if incidentally caught and subsequently sold or donated to a recognized scientific or educational organization for research or display purposes.

(4) Pacific halibut may be retained if harvested in accordance with part 300, subpart E of this title, and other applicable law.

\* \* \* \* \*

**§ 660.711 [Amended]**

4. In § 660.711, remove paragraph (a) and redesignate paragraphs (b) through (d) as (a) through (c).



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